

1901-013 Chancery Causes: Cynthia J. Bishop & vs. W. B. Wygal
Lee Co.

CA-Estate Dispute
T-Property

To the Honorable H.A.W.Skeen, Judge of the Circuit

Court of Lee County, Virginia:

Humbly complaining your oratrix and Orator, Cynthia J. Bishop and E.S. Bishop, her husband, will respectfully show to your Honor, that one Birdine Wygal, a citizen of this County, departed this life several years ago seised and possessed of a very large and valuable real estate; that the said Birdine Wygal was survived by his wife Ursula Wygal and nine children, ~~two~~ of whom were your oratrix, Cynthia J. Bishop, and one M.B. Wygal; that, after the death of the said Birdine Wygal, dower was assigned to his widow and the remainder of his land was partitioned among his several children; that the dower thus laid off and assigned to the widow contained about one hundred and seventy-six (176) acres and the share assigned to your oratrix adjoins said dower on the western side thereof; that after the death of the said Birdine Wygal, and after the assignment of dower, as aforesaid, to his widow, the said M.B. Wygal purchased the undivided interest of each of his brothers and sisters, except your oratrix, in said dower lands. It is thus shown that the said M.B. Wygal is the owner of eight-ninths of said dower land and your oratrix is the owner of the other undivided ninth part thereof.

Your oratrix and orator will now show your honor that the widow, Ursula Wygal, departed this life about the last of January, 1901, thereby terminating her life estate in said lands, and that the said M.B. Wygal has taken possession of the whole thereof and refuses to make partition of the same with your oratrix and orator, and he is using said land to suit his own convenience and purposes and is depriving your oratrix and orator of any use of the same.

Your oratrix and orator will now show your honor that they have been anxious to partition said land amicably with the said Wygal and to save the unnecessary expense of a chancery suit. They have made repeated efforts to agree a partition with him, failing in this they agreed with him upon two disinterested men, who, if necessary were to select a third man to act as umpire, to go upon said lands and partition the same in accordance with the rights of each of them. These

two men thus selected and agreed upon, went upon said lands and laid off to your oratrix her one-ninth interest in said land adjoining present lands, and while your oratrix and orator are of the opinion that the assignment made to them was hardly fair, yet they were willing to accept the same and avoid any further trouble, but the said Wygal absolutely refused to abide by said partition, and so said tract of land stands undivided and the whole of it in the possession of the said M.B.Wygal.

Your oratrix and orator will now show your honor that the said M.B.Wygal has sold, had cut and removed from said lands valuable cedar timber for which he received the sum of Forty Dollars and Seven cents (\$40.07); that he has also sold, cut and removed from said land one very valuable poplar tree for which he received the sum of Eight Dollars (\$8.00), and that he refuses to pay to your oratrix her due proportion of said money.

Your oratrix and orator will now further show your honor that the reasonable rents and profits of your oratrix's undivided share in said land for this year is reasonably worth the sum of Forty Dollars (\$40.00) for which the said Wygal should account to them.

The object of this bill is to have said land partitioned in kind and being without adequate remedy at law they pray your honor's court of chancery to take cognizance of their cause and grant them proper relief; to this end they pray that the said M.B.Wygal be made a party defendant to this bill and that he be required to answer the same, but he need not do so on oath as answer under oath is waived, and upon a final hearing your oratrix and orator pray that said land be partitioned, and that her share be laid off adjoining her other lands which she avers can be done without material injury to the rights of the said M.B.Wygal; that commissioners be appointed for the purpose of making said partition and that they be directed to lay off to your oratrix her due proportion of said land adjoining the other lands owned by her as aforesaid; that the said M.B.Wygal be required to pay her, her due proportion of the money he received upon sales of timber from said land

and that he be compelled to account to her for the reasonable rents and profits of her undivided interest in said land for the present year, and that the commissioners appointed for the purpose of partitioning said land be directed to ascertain the exact amount of money received by the said Wygal on the sales of timber, and that they also ascertain the value of the rents and profits of her share in said land.

If mistaken in anywise in their special prayers for relief, as herein set out, then they pray for such general relief as their case merits. And as in duty bound they will ever pray &c.

C. T. Duncan P.O.

Plaintiffs Costs

Clerk 9.40

Tax 1.50

Shff 2.00

atty 15.00

Co clerk 3.00

Cammical 15.00

Albert 6.00

Subron 6.00

\$57.90

Plaintiff pays \$6.43 $\frac{1}{3}$

Defendant pays \$146 $\frac{2}{3}$

\$57.90

Cynthia J. Bishop et al

v. { Bill in Chy.

M. B. Wygal.

1901 2nd mag rules bill
Filed & pa & executed & D. N.

" 1st June rules held the
last Monday in May
D. N. confirmed &
Cause set for hearing

Novr Term 1901

Decree final

L. T. Duncan. p. J.

Cynthia J. Bishop, and others,

Plaintiffs,

v. ANSWER OF M. B. WYGAL,

M. B. Wygal,

Defendant.

This Respondent, reserving to himself all just exceptions to the Bill in this cause, yet answering says:

It is true, as stated in the bill, that Burdine Wygal departed this life leaving the land and the children as in the Bill mentioned; and that this Respondent owns eight ninths of said dower land, and the Plaintiff, Mrs. Cynthia J. Bishop, the remaining one-ninth.

It is true that the widow of said Burdine Wygal has departed this life, and that this Respondent is in possession of said dower land. Respondent had bought out the entire life estate of his mother in the whole of said land, and was in possession thereof under his purchase. The death of his mother did not occur until after the beginning of the present year, and Respondent had made all preparations for carrying on a crop during this year; and that the land could not be partitioned in time for him and the Plaintiff, Mrs. Bishop, to cultivate their respective parts separately. Respondent ^{was} ~~would~~ advised that it ^{was} ~~is~~ proper for him to retain possession and cultivate the entire land, accounting to his sister, Mrs. Bishop, for her proper proportion of the rent of said place. Respondent would further state, however, that owing to the

interference of Plaintiffs he ~~is~~ unable to cultivate and use the whole of said place, and was deprived of cropping or renting a part thereof, which will curtail the amount of rents to be accounted for.

Respondent denies that he made any positive agreement for a partition by Commissioners in the country, on the contrary he refused to enter into any writings, or other binding agreement; but told the Plaintiffs that certain men might look over the ground, and if in the opinion of Respondent they suggested a suitable and proper partition Respondent would agree upon it, but this they did not do. They did go over the ground, but the partition suggested by them was not in accordance with Respondent's idea of what was right, and Respondent declined to agree to the partition thus suggested.

Respondent admits that he cut and removed certain timber which is set out in the bill with approximate correctness. The amount of the cedar timber was \$40.05, and the amount of the poplar trees was \$7.52. Respondent had this timber cut with a view of making permanent improvements upon the premises. It was done with the knowledge of the Plaintiffs and without their objection; but Respondent received the money and admits his liability to the Plaintiffs for one-ninth of said sums. There is \$1.00 of expenses, however, that is to be taken from the total of this item.

Respondent denies that the fair rental value of this land ~~is~~ is such as that the Plaintiffs one-ninth would amount to

\$40.00 per year. It will not amount to over \$12.00 to \$15.00. Respondent is willing for Commissioners to hear evidence and view the premises and report on this point, as suggested by the Plaintiffs in their bill. Respondent is as anxious as the Plaintiffs to have all these matters settled as fairly, as cheaply, and as speedily as practicable, since Respondent's interest is much greater than that of the Plaintiffs, and he is more interested in having the matter settled than they. Before the death of his mother Respondent had seeded eight acres of said land in small grain and had prepared the fencing and made other improvements on the farm for the crop during the current year; and he is advised that these items are ^{proper} particularly to be considered by the Commissioners in fixing the value of this year's rent.

And now having answered as fully as he is advised is material that he should answer, Respondent prays to be hence dismissed with his proper costs in this behalf expended.

on & Inure
p.d.

Cynthia J. Bishop et al

v. Answer of M B Wygal.

M. B. Wygal.

Filed in open Court
and by leave thereof
June 6th 1901.

A B Murray Clerk

Cynthia J. Bishop et als

Vs.

M.B. Wygal.

This cause came on again this day to be heard upon the papers heretofore read, the report of L.M. Carmical, J.P. Albert and Z.S. Gibson, Commissioners appointed for the purpose of partitioning the lands in the bill and proceedings mentioned, which report was filed on the 1st day of November, 1901, exceptions to said report filed by M.B. Wygal with affidavits accompanying the same and the counter affidavit of E.S. Bishop filed by the plaintiff, and was argued by counsel.

On consideration whereof the Court is of opinion that said exceptions are not well taken, it is therefore adjudged, ordered, and decreed that said exceptions be and the same are hereby overruled: it is further adjudged ordered and decreed that said report and plat be and the same is hereby confirmed; and the said plaintiff, Cynthia J. Bishop take and hold the lots or parcels of land marked "1" and "2" on said plat by the metes and bounds thereof as defined by said commissioners in their report and shown on their plat free from the claim of the said M.B. Wygal, defendant, said lot ~~one~~ "1" is bounded by the letters "A", "B", "C", "D", "E", "F" and "A", said lot No. 2 is bounded and shown on the plat by the letters G, H, I, J, K, L, M, and G; and the ~~clerk of this Court~~ clerk of this Court will deliver said plat and report together with a copy of the decree appointing said commissioners and a copy of this decree to the Clerk of the County Court of Lee County to be recorded by him in the proper deed book in his office as a muniment of the title of each of said parties to their respective shares of said land, which respective shares shall hereafter be held in severalty by said parties.

It is further adjudged ordered and decreed that the said plaintiff recover of the defendant \$5.06 $1/3$ with interest thereon from the 1st day of Nov, 1899, on account of timber cut and re-

moved by him from said land.

And it is further adjudged, ordered and decreed that said plaintiff recover of the said defendant \$13.88 $\frac{8}{9}$ with interest thereon from this date being one-ninth of the value of the rents, issues, profits, use and occupation of said tract of land for the year 1901. Said fences mentioned in the report of the Commissioners are to be held and fixed as determined by said commissioners.

It is further adjudged, ordered and decree that the plaintiff recover of the defendant eight-ninths of the costs of said suit to be taxed by the Clerk which said taxation of costs shall include the fees of the Clerk of the County Court for recording said report, plat and decrees herein before ordered to be recorded, for which said costs as well as the recoveries herein before adjudged to the said plaintiff execution may issue. And this cause is stricken from the docket.

and it is ordered that said Plaintiff pay all costs of the Tax on account of land for the year 1901.

Cynthia J. Bishop et al

vs. } Decree final.

W. B. Wygal

Entered on Chy O.B.

No 7 Pages 28029

Enter this Decree

Nov. 13, 1901

H. A. W. [unclear]

Cynthia Bishop et al

vs.

M.B.Wygal

-----Plaintiffs)

) In Ch'y.

-----Defendant)

This cause came on this day to be heard upon the bill of the plaintiffs, the answer of the defendant and general replication to said answer, and was argued by counsel. On consideration whereof, the Court is of opinion that the plaintiffs are entitled to have said land partitioned, and an accounting for rents and profits and for timber sold from said land by the defendant M.B.Wygal; it is therefore adjudged ordered and decreed that L.M.Carmical, J.P.Albert and Z.S.Gibson, who are appointed commissioners for the purpose, do go upon the land in the bill and proceedings mentioned and partition the same between the plaintiffs and the defendant, giving to said complainant, Cynthia J.Bishop one- equal ninth part thereof, quantity, quality, wood, ways, water and timber considered; and in making said partition they will lay off the interest of the said Cynthia J.Bishop adjoining her other lands, provided the same can be done without material injury to the interest of the said M.B.Wygal. Said commissioners will also hear evidence of the value of the timber cut from the said land by the said M.B.Wygal and any expenses incurred by him in cutting the same if any, and they will also hear evidence of the value of the rents and profits and use and occupation of said land for the present year; they will report their action hereunder to the next term of this Court. And this cause is continued

Cynthia J. Bishop et al
vs. { Du Cuy.

M. B. Wygal

Entered on C.B.
No 6 P 5 71.

Enter this Decree
H. C. W. Sherrin
June 7, 1901

Virginia

At a Circuit Court continued^{and} held for
Lee County at the Court house thereof on Fri-
day June 7th 1901.

Cynthia Bishop et als Pliffs
vs
M.B. Hygal Def't- } In Chy.

This cause came on this day to
be heard upon the bill of the plaintiffs
the answer of the defendant^{and} general replica-
tion to said answer^{and} was argued by counsel.
On consideration whereof the court is of opin-
ion that the plaintiffs are entitled to
have said land partitioned^{and} an account-
ing for rents^{and} profits and for timber
sold from said land by the defendant
M.B. Hygal. It is therefore adjudged^{and} ordered^{and}
decreed that L.M. Carmical, J.P. Albert^{and} J. S.
Gibson who are hereby appointed Com-
missioners for the purpose do go upon
the land in the bill^{and} proceedings mentioned^{and}
partition the same between the plaintiffs^{and}
defendant giving to said Complainant, Cynthia
Bishop one equal ninth part thereof, quan-
tity, quality, wood, ways water^{and} tim-
ber considered, and in making said
partition they will lay off the interest of
the said Cynthia J. Bishop adjoining her other
lands provided the same can be done without

material injury to the interest of the said M.B. Wygal. Said Commissioners will also hear evidence of the value of the timber cut from said lands by the said M.B. Wygal and any expense incurred by him in cutting the same, if any, and they will also hear evidences if any of the value of rents and profits and use and occupation of said land for the present year; they will report their action to the next term of this court. And this cause is continued

A copy

Respectfully, A.B. Munsey Clerk.

Cynthia J. Bishop
vs } Copy of Decree
M.B. Wygal

Entered Jan 17th
1901 by Clerk
a Dated copy of the
within Decree to
Honorable J. Paul
J. S. Hudson
W. M. M. M.
J. L. C.

Copies for
L. M. Leammical
L. P. Albert &
J. S. Gibson

Virginia Lee County To Wit

I, E. S. Bishop, do solemnly swear, that I am the husband of Cynthia J. Bishop, the plaintiff in a certain suit for partition instituted in the Circuit Court of Lee County, Virginia, in which the said Cynthia J. Bishop is plaintiff and M. B. Wygal is defendant; that I am well acquainted with the lands in the bill and proceedings mentioned in said cause; that I was present when the Commissioners appointed for the purpose of partitioning said land, were performing their duties; that I have examined carefully the partition made by said commissioners as shown by their plat and report; that I am well acquainted with the land which is assigned to the said Cynthia J. Bishop and that the same so laid off and assigned to her is not more than her just proportion of said land; that it is not more than equal to one-ninth of the entire tract, if it is equal in value to one-ninth of the value of the entire tract. Affiant is of opinion that the line between the points "H" and "I" should have been run further east so as to have made the strip assigned to the plaintiff equal in width to the strip between "F" and "E" and "D". Affiant says that he is well acquainted with the spring at or near the point "C" on said plat; that said spring is the only water on the parcel of land assigned by the commissioners to the said plaintiff; that one-half of said spring is already the property of the said Cynthia J. Bishop, she having been heretofore assigned in the partition of her father's estate a strip of land 2 poles wide as shown on said plat. Affiant states that it is true that the water of the spring at or near "C" runs on to the defendant's land where it intersects a branch running from another spring on the land assigned to the defendant, and ~~xxxxx~~ from two to three poles below the head of the spring, and then the water flows northward with easy grade on through defendant's land. Affiant can see no way by which the defendant's spring could be in any way contaminated by water flowing from the spring assigned to the said plaintiff because the head of the said plaintiff's spring is forty or fifty yards from the other spring and there would be no way to change the flow the water except to cut a ditch over the defendant's land from one spring to the other. Affiant as the agent of his wife attempted to partition said land with the

defendant without the necessity of a suit but said defendant refused
He and affiant then agreed on two men to make said partition who met
on said land and made the same and defendant refused to abide by the
partition so made by the said parties so chosen. Affiant through his
counsel then submitted the proposition to the said defendant that he
the defendant should select one man, your affiant's counsel another
man and that those two should select a third one, to which fair propo-
sition defendant again refused to accede. The whole contentition as it
seems to affiant in reference to said spring is imaginary. If the said
complainant desired to erect house of hog pens about said spring she
could do it just as easily on the two rods that she already owns there
as on the corner or triangle assigned her in this partition. Said trian-
gle is a steep hill-side unfit for buildings of any kind, and it would
be ~~impossible~~ ^{impracticable} to erect a building there without affecting more inju-
ry to the plaintiff's spring than to the defendant. So help me God.

E. S. Bishop

Sworn to before me by E. S. Bishop, this the 9th day of November

1901.

Geo. P. Cridlin
Notary Public for Lee County, Va.

Affiant further states that the said Plaintiff
only got by said partition about 1/9 of the old
ing trees in said Orchard and not more than her
equal share thereof. While this is so in reference
to the orchard, the American house stands on the
land assigned to defendant. This house with
the garden and improvements around it are
reasonably worth \$200. There is also on the
land about eighty fine good and valuable
Poplar trees and other valuable ^{trees} worth \$5.00 ^{per}
tree only 5 or 6 of which Poplar are land assigned
to Plaintiff while ^{the} all the other valuable ^{trees}
is on land assigned to Defendant.

E. S. Bishop

Cynthia J. Bishop et al
vs { Affidavit
J. S. Bishop
M. B. Hygal

LEE CIRCUIT COURT.

Cynthia J. Bishop, et al,

Vs.

Exceptions to Commissioners' report.

M. B. Wygal,

The defendant, M. B. Wygal, excepts to the report of the commissioners filed in this cause, November 1st, 1901 for the following reasons:

First ~~being~~^{cause}, more than one-ninth($1/9$) of the tract of land in controversy, quantity and quality considered, has been assigned to the plaintiff, and the partition in this report is unequal..

Second ~~being~~^{cause}, by the peculiar manner of allotment of the plaintiff's share in the triangle, B C D, special damage is done to defendant's land in which no compensation is given to the defendant, and which arrangement gives to the plaintiff no corresponding benefit.

over & under
-R.D.

LEE CIRCUIT COURT

Cynthia J. Bishop, et al, |

Vs. |

M. B. Wygal. |

Affidavit in support of Defense.

In support of the defendant's exceptions the defendant, M. B. Wygal states that as to his exceptions made to the report of the commissioners filed in this cause November 1st, 1901:

Exception No. 1. That the plaintiff is assigned by the commissioners more than one-ninth ($1/9$), quality and quantity considered, of the land in controversy. The total area is 175 A. $1/9$ of this amount is 19.33. The acreage assigned the plaintiff is 24.50, which leaves 5.17 acres excess to the plaintiff, he states that the land assigned to the plaintiff is on an average fully equal to the average of the tract in controversy; that while the dwelling house and improvements are on his portion, said dwelling house and improvements are not worth reasonably, more than \$10000, whereas there is assigned to the defendant about one-fourth of the fruit bearing portion of the orchard on said place, which gives to the plaintiff an excess in the value of the improvements including the orchard at something like \$15.00 the orchard being worth \$100.00, which is an equal amount to the dwelling house and improvements ~~all~~ around it.

He says further that the section of land as shown on the plat from figure 1 to the letter A is rich land but is narrow and the plaintiff is assigned more than her fair portion of the said rich land. From the figure 1 to the letter F the said land is cedar land, is poor, rocky and barren, and the plaintiff was not assigned as much of the said cedar land in proportion as should have been assigned her. The southern portion of said land from G to M is composed of nearly $1/2$ of good land and something more than $1/2$ poor land all being in timber. The plaintiff has had

assigned to her, her full and fair portion of good land, and no more than her fair portion of poor land on this end of the farm.

As to the second exception, the said defendant states that by partition^{ing} to the plaintiff the triangle of land indicated by B C D is done or may hereafter accrue a large amount of damage.

The plat indicates a lane 2 poles wide beginning at the letters A G and running to the letter C. In the north line of this lane, about 2 poles from the point C is a spring which is cut into by the line B C the water from which spring runs across the lane southwardly on the defendant's land, and runs in about 1 pole of another spring on the defendant's portion of land, at which distance of 1 pole, the water from the two springs unite and flow in one branch to the northward. The last named spring is the only spring on the defendant's land, belonging entirely to said land and it is the spring which furnishes the dwelling house on said land, ^{with water} the said dwelling house being located about 120 yards southward from the last named spring.

The two spring are about 40 yards apart, the ground between the two springs is practically level and it is partially swampy and is very swampy below the said two springs. The branch from said two springs on the defendant's land would therefore be easily contaminated and rendered unfit for use and unhealthy, should pollution be placed in or about the upper spring. The commissioners by allotting to the defendant the triangle B C D throw not only the said triangle but all of said lane, therefore in the plaintiff's area, the whole of said upper spring, [^] this would enable the plaintiff or the successors to her in the ownership of said land to erect about or below a dwelling house with drainage and off-fall running into said spring, barn or hog pens or other sources of pollution or unhealthiness, which would render useless and of no value the said lower spring, which is the only source for watering on said land

For this reason said defendant asks that the said triangle referred to be cut out of the plaintiff's area and be given to him. The area of this triangle is approximately 1/2 acre, its value as land is but small and does not compare with the damage which might result, and most probably would result by throwing it into the area allotted to the plaintiff. If the readjustment asked by the defendant be granted the plaintiff would still have remaining 1/2 the upper spring and two rods of the spring branch as she now has it, which affords ample watering facilities and will continue to afford ample facilities for plaintiff's land.

The defendant further says that the taxes for 1901 against the whole of the land in controversy are charged to him in the commissioner's books, and the amount of said taxes for said year is \$---- and he says that he should be allowed a credit of 1/9 of said amount of said taxes as an off set against 1/9 of the rental value of all of said land, which 1/9 he may be decreed to account to the plaintiff for.

M. B. Wygal

Subscribed and sworn to before me by M. B. Wygal this the 5th day of November, 1901.

B. M. Morgan

T. J. Chandler says he lives adjoining M. B. Wygal & knows the situation of the land & spring described in the second exception made above that he has read said second exception & believes the statements made therein are true - *T. J. Chandler*

Subscribed and sworn to by T. J. Chandler this the 8th day of Nov. 1901.

B. M. Morgan

Clerk.

F. A. Mauss says he lives near the above land & knows the situation described as to the springs & the triangle of land & that he has read the foregoing affidavit & holds in said points & that he believes the facts stated to be statements made therein are true. He says great damage will result to the dept if the report of the Comm is adopted - that he would rather give up ten acres of the land in question than to let the triangle stand.

Subscribed and sworn to before me this 8th day of November 1901, H. C. Woodward Commissioner